Supreme Court, U. S.
FILED
OCT 17 1978
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-211

INTERNATIONAL ORGANIZATION OF MASTERS, MATES AND PILOTS,
Petitioner,

v.

NEWPORT TANKERS CORPORATION

and

NATIONAL LABOR RELATIONS BOARD,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

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PETITIONER'S REPLY BRIEF

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October 1978

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

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PETITIONER'S REPLY BRIEF

Petitioner desires to make two short comments in reply to the brief in opposition filed by Newport Tankers Corporation and the memorandum filed by the National Labor Relations Board.

1. No clearer demonstration that this is a case of a statute gone haywire could be found than in Newport's brief in opposition. Newport argues, *inter alia*, that the

picketing involved here, if allowed to continue, will enhance petitioner's "featherbedding demands" (Newport Br. 14); and that petitioner "is seeking some means of gaining a stranglehold upon American shipping in order to impose its outdated and unwarranted manning standards upon unwilling American shippers." (*Id.* at 16). By use of this inflammatory rhetoric, Newport seeks to justify the application of Section 8(b)(1)(B) to prohibit the picketing involved here. But that statute is not a universal nostrum; it was designed to achieve a specific and limited purpose. Certainly that purpose was not to prevent "featherbedding." Thus, whether or not petitioner's manning standard can be fairly characterized as "featherbedding" (which petitioner, of course, would deny) is beside the point. The issue here is whether Section 8(b)(1)(B) prohibits peaceful picketing to secure compliance with such a standard. We submit that it does not, but the issue is certainly an important one which should be settled by this Court.

2. The Board's memorandum agrees with petitioner's contention that the Court of Appeals misconstrued the statute and applied an erroneous standard of review. The Board suggests, however, that the case may not be appropriate for certiorari because "the court of appeals alternatively based its holding that MMP violated Section 8(b)(1)(B) on the ground that MMP intended to force replacement of the deck officers with its own members." (NLRB Mem. 6). While there is one sentence (and an accompanying footnote) in the court's opinion (Pet. App. 7a & n.6) which seems to take issue with the Board's finding as to the "actual object" of the picketing, we believe this was mere dictum rather than an alternative holding. Certainly the principal basis of the court's decision, as the Board's memorandum recognizes, was its disagreement with the Board's interpretation of the statute, not its disagreement with the Board's findings of fact. Moreover, the complaint in this case did not even

allege that the object of the picketing was to force replacement of any deck officers. Rather, the complaint, as amended at the hearing, alleged that the picketing was unlawful *only* "in that its object was to force O.B.O. *to add to its complement of licensed deck officers an additional third mate.*" (Emphasis added.) Thus, it was plainly improper for the Court of Appeals (as well as the dissenting Board member) even to suggest that the picketing may have had some other object. The sole issue in this case was the purely legal issue of whether picketing to require the employer "to add to its complement of deck officers an additional third mate" was prohibited by Section 8(b)(1)(B). That issue was squarely decided both by the Board and the Court of Appeals. In view of its importance, and the highly questionable character of the court's decision, the issue should be reviewed by this Court.

CONCLUSION

For the reasons stated above and in the petition, a writ of certiorari should issue to review the judgment of the Court of Appeals.

Respectfully submitted,

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